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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Kingston, New York)

)
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) MM Docket No. 00-121
) RM-9674
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REPLY OF WRNN-TV ASSOCIATES LIMITED PARTNERSHIP

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REPLY OF WRNN-TV ASSOCIATES LIMITED PARTNERSHIP

WRNN-TV Associates Limited Partnership ("WRNN"), licensee of WRNN-TV (Channel 62), Kingston, New York, by its attorneys, hereby replies to the comments of WKOB Communications, Inc. ("WKOB") in connection with the Notice of Proposed Rule Making ("NPRM") proposing to substitute digital television ("DTV") Channel 48 for WRNN-TV's currently authorized DTV Channel 21. As shown in WRNN's original petition, supplements and herein, the proposed allotment will provide compelling public interest benefits by reducing interference in the marketplace, enhancing the overall availability of DTV services, and facilitating the early release of 700 MHz spectrum. WKOB, the licensee of a low power television station and the only party to oppose the NPRM, provides no grounds for denying or delaying the allotment of DTV Channel 48 as proposed.

I. Introduction and Summary

Approval of the requested allotment would provide substantial public interest benefits and comply in every respect with FCC rules and Congressional policy. As the Commission

found in the NPRM, the allotment of Channel 48 to WRNN-TV meets the city of license coverage requirements of Section 73.625(a) and the technical interference standards of Section 73.623(c)(2). Further, grant of the proposal would provide benefits to other valuable full power services by reducing interference generally and by eliminating all harmful interference to noncommercial educational station WLIW(TV) (Channel 21), Garden City, New York. The change also would dramatically enhance the availability of new over-the-air DTV service in furtherance of a key policy objective of this Commission. Promoting the success of that service in turn would facilitate a second major undertaking of the Commission as directed by Congress – the prompt recovery and reuse of the 700 MHz band for the next generation of advanced telecommunications services. Specifically, by providing WRNN-TV with the best chance to make its DTV service a success, the station could more quickly complete its transition to DTV and relinquish its analog spectrum on Channel 62.

WKOB, the licensee of low power television station WKOB-LP, New York, New York, does not allege that the proposal is inconsistent with any Commission rule. Rather, WKOB contends that the requested DTV allotment would conflict with a construction permit authorizing WKOB-LP to operate on Channel 48. WKOB also questions the adequacy of WRNN's public interest showing, and claims that the proposed allotment raises issues being considered by the Commission in a separate rulemaking proceeding.

WKOB's low power station is purely secondary and, accordingly, is required by law not to interfere with, and to accept interference from, authorized full-power services. However, to the extent the Commission considers the impact of the proposal on WKOB at all, the obvious public interest benefits of the proposed allotment overwhelmingly outweigh the potential impact to a single secondary – and part-time only – low power service located in the

middle of the nation's most robust media market. In addition, WRNN reiterates its willingness to comply with whatever rules the Commission may adopt in the future with respect to DTV service requirements. Accordingly, the concerns raised by WKOB are without merit, and WRNN-TV's DTV allotment should be promptly modified as proposed.

II. The Assignment of Channel 48 Complies with the Commission's Rules and Policies for Digital Allocations, and Will Yield Substantial Public Interest Benefits

WKOB alleges that WRNN has not made an "adequate" public interest showing in support of the proposed Channel 48 allotment. To the contrary, the proposal is fully consistent with all applicable rules and policies, and will further several paramount Commission objectives: reducing interference to full-power services, promoting the availability and public acceptance of DTV service, and enhancing spectrum efficiency by facilitating the recovery, as promptly as possible, of 700 MHz spectrum to pave the way for the next generation of telecommunications services.

A. WRNN's Proposal Fully Complies with the Commission's Requirements for Modifications to the DTV Table of Allotments for Existing Services

Section 73.623(c) of the Commission's Rules, which sets the standard for petitions for rule making to modify an existing DTV channel allotment, requires the petitioner to demonstrate that the proposed change will: (1) enable the station to comply with the principal community of license requirements of Section 73.625(a); and (2) not cause more than *de*

minimis interference (two percent) to an authorized television station. Interference protection is afforded only to authorized full-power services.¹

In the *NPRM*, the Commission concluded that WRNN's proposal complies with Section 73.625(a). The Commission also determined that the proposed Channel 48 allotment satisfies the 2 percent *de minimis* interference standard.² WKOB does not challenge either of these findings. Accordingly, WRNN's proposal for Channel 48 meets the required standard for modifying the DTV Table of Allotments and, as shown below, will yield substantial public interest benefits.

B. WRNN-TV's Proposed Operation on DTV Channel 48 Will Reduce Interference in the Marketplace and Safeguard a Valuable Noncommercial Educational Television Service

The substitution of DTV Channel 48 for Channel 21 will further the public interest by reducing the overall level of unmasked interference to other protected services. WRNN has shown that, in addition to generating substantial service *gains*, operating on DTV Channel 48 will result in a net *decrease* of predicted unique interference to more than 32,000 people.³ Again, WKOB does not challenge this finding. The allotment of Channel 48 therefore would be more spectrum efficient than the existing DTV allotment.

In addition, the proposed channel change would benefit the noncommercial educational television service provided by WLIW(TV), Garden City, New York. WRNN has previously

¹ See 47 C.F.R. § 73.623(c).

² *NPRM* at ¶ 3.

³ See WRNN Supplement to Petition for Rulemaking, MM Docket No. 00-121 (April 30, 1999), at 3 ("*WRNN Supplement*").

demonstrated that operation on its currently assigned DTV Channel 21 would needlessly cause unmasked interference to almost 60,000 viewers within WLIW's service area.⁴ WKOB attempts to discount this problem by complaining that WRNN has not specified the nature of the area, or the availability of other noncommercial services, within the zone that would receive interference. WKOB tries to ignore the fact that the significant level of interference to WLIW's co-channel analog service could be detrimental to its noncommercial educational service. Commission policy clearly favors safeguarding noncommercial operations during the DTV transition.

Throughout the DTV proceedings, the Commission has observed that "noncommercial educational licensees would face unique problems in their transition to DTV, particularly in the area of funding."⁵ Indeed, comments from the public broadcasting community reflected significant concern about the ability to raise sufficient capital to maintain current operations in addition to constructing new DTV facilities.⁶ Acknowledging these concerns, the Commission reiterated the "view that noncommercial stations will need and warrant special relief measures to assist them in the transition to DTV."⁷

The location and availability (if any) of other noncommercial services in the WLIW interference area is irrelevant to the difficulties that WLIW could encounter from a conflicting

⁴ See *WRNN Supplement* at 4. WRNN also has shown that operation on DTV Channel 21 would displace the low power operations of W21BU, Catskill, New York. *Id.*

⁵ *Advanced Television Systems (Fifth Report and Order)*, 12 FCC Rcd 12809, 12851 (1997) ("*Fifth Report and Order*").

⁶ See *id.*

⁷ *Id.* at 12852.

co-channel DTV service. Indeed, in comments supporting WRNN's DTV proposal, the licensee of WLIW – Long Island Educational Television Council, Inc. ("LIETC") – states that the allotment of DTV Channel 48 would benefit the station by allowing it to "continue to serve its viewers, upon whom LIETC relies for financial support."⁸ LEITC also notes that, because of the need for capital resources to cover the cost of transitioning to DTV, "[a]voiding unnecessary disruptions in WLIW's existing service level would significantly enhance the station's ability to make the necessary investments for the conversion to digital."⁹ Thus, the allotment of Channel 48 will reduce interference and further the Commission's goal of easing the burden on financially dependent noncommercial educational services in the transition to DTV.

C. The Assignment of Channel 48 as Proposed Will Dramatically Promote the Overall Availability and Public Acceptance of DTV, and Permit WRNN-TV To Maintain a High-Quality Level of Service to Its Community of License

The very first goal identified by the Commission for the transition to DTV is "preserving a free, universal broadcasting service."¹⁰ The FCC recognized that the only way to assure the preservation of "broadcast television's unique benefit" – a free, ubiquitous program service – is for DTV to achieve wide acceptance in the marketplace.¹¹ In furtherance

⁸ Letter from Terrel L. Cass, President and General Manager, Long Island Educational Television Council, Inc., MM Docket No. 00-121 (filed Aug. 21, 2000) at 1.

⁹ *Id.*

¹⁰ *Fifth Report and Order*, 12 FCC Rcd at 12811.

¹¹ *Id.*

of this objective, the Commission has held that increasing the population served by a DTV facility would further the public interest by “enhancing viewer acceptance of DTV....”¹² Approval of WRNN’s request for Channel 48 would greatly enhance the availability of DTV service and, as a result, promote the Commission’s goal of preserving free over-the-air television service.

WRNN has shown, and WKOB does not dispute, that operation on DTV Channel 48 by WRNN-DT would result in a net increase in interference-free service to more than 5.9 million people.¹³ Improving the reach of WRNN-DT – in full compliance with the Commission’s community service and interference rules – clearly will promote the availability of DTV and expedite consumer acceptance of the new service. Thus, approval of this allotment will ensure that the Commission’s paramount objectives of encouraging the transition to DTV and preserving free broadcast television service will be met.

Acknowledging these obvious service gains, WKOB requests that the Commission evaluate the offsetting “cost” of the proposed allotment to the citizens of Kingston. Thus, WKOB claims that the proposal “implicates concerns” raised by the ongoing DTV biennial review proceeding, in which the Commission proposed to adopt a new city grade service

¹² *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Baton Rouge, Louisiana)*, MM Docket No. 99-317 (Aug. 3, 2000) at ¶ 2. *See also Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Salt Lake City, Ogden and Provo, Utah)*, MM Docket No. 99-197 (May 18, 2000) at ¶ 11 (“increas[ing] consumer acceptance and use of DTV services ... will facilitate DTV transition in the market as a whole”).

¹³ *WRNN Supplement* at 4. Thus, WKOB is incorrect in suggesting that WRNN has not analyzed gain/loss areas to determine whether the allotment of Channel 48 would serve the public interest. WKOB Comments at 4.

standard and called for comment on whether to impose a replication requirement.¹⁴ Contrary to WKOB's suggestions, service to Kingston will be *enhanced* as a result of this proposal by improving the early viability of WRNN's DTV service.

As shown in WRNN's previous submissions, WRNN-DT on Channel 48 would provide a minimum of 70 dBu service to all of Kingston.¹⁵ This is 29 dBu higher than required under current rules, and 13 dBu higher than the Commission proposes as the minimum level for principal community service. Moreover, WRNN-DT's general DTV service contour (41 dBu) would extend more than 42 kilometers beyond Kingston.¹⁶ Accordingly, while WRNN proposes to increase the population served – in furtherance of clear Commission policies – the station will continue to provide a robust service to Kingston and to points well beyond. WRNN's service and commitment to Kingston will remain as strong as ever.

In addition to satisfying the proposed DTV city grade standard, WRNN would sufficiently replicate its current NTSC service area to facilitate the transition to DTV within its market. In fact, most of the area within WRNN-TV's current Grade B contour that would not theoretically receive replicated DTV service is outside the station's currently-defined television market. WRNN-TV, licensed to Kingston, is located in the New York DMA. However, the

¹⁴ WKOB Comments at 5; *see Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 00-83 (March 8, 2000) ("*DTV Biennial Review*").

¹⁵ *See* WRNN Further Supplement to Petition for Rulemaking, MM Docket No. 00-121 (April 24, 2000) at 2.

¹⁶ *Id.*

station's current Grade B contour extends north of the New York DMA into other television markets, including the Albany DMA (the counties of Albany, Greene, Columbia, Rensselaer, Schoharie (all of NY), Bennington (VT), and Berkshire (MA)); the Binghamton DMA (Delaware County); and the Hartford-New Haven DMA (Litchfield County).¹⁷ Since these areas fall outside of WRNN-TV's market, the station has no mandatory cable carriage rights in this region, subject only to the limited exceptions noted below.

WRNN recently petitioned unsuccessfully to have many of the communities within the Albany DMA added to its market for purposes of must carry. Finding that WRNN-TV's coverage of most of the Albany DMA was "spotty at best," the Cable Services Bureau held that only the southernmost part of the Albany DMA "defines the limit of [the station's] market."¹⁸ Thus, the Bureau denied WRNN's petition for market modification with respect to all the Albany DMA, except for specified communities in the counties of Greene and Columbia (at the southern tip of the DMA) and six small communities in the counties of Schoharie and Albany. Since WRNN-DT's 41 dBu contour (Channel 48) would encompass most of the counties of Greene and Columbia, all but the northern most stretches of the area considered by the Bureau to be within WRNN-TV's market would receive a replicated DTV service on Channel 48.¹⁹

¹⁷ See Petition for Special Relief of WRNN-TV Associates Limited Partnership, CSR-5392-A (April 1, 1999) at Exhibit 3.

¹⁸ *WRNN Associates Limited Partnership; for Modification of the New York, New York ADI Market*, 14 FCC Rcd 13453, 13469-70 (CSB 1999), Application for Review filed by WRNN, pending.

¹⁹ See *WRNN Supplement* at Figure 3. In any event, WRNN's proposal would fully satisfy the Commission's objectives with respect to replication without regard to the Bureau's
(Continued...)

In sum, the allotment of Channel 48 would greatly expand the reach and public acceptance of DTV without any offsetting “cost” to Kingston or the surrounding region. Indeed, by increasing the chance for WRNN’s DTV service to be accepted in the marketplace, the Commission would further yet another paramount objective – the prompt recovery of spectrum needed for new telecommunications services.

D. The Allotment of Channel 48 Will Promote Spectrum Efficiency and Facilitate the Prompt Introduction of New Advanced Wireless Services in the 700 MHz Band in the New York Market

In addition to safeguarding universal over-the-air television service, the recovery of spectrum – “so as to promote spectrum efficiency and to allow the public the full benefit of its spectrum” – is a fundamental policy objective in the development of DTV.²⁰ Allotment of Channel 48 would serve this objective by facilitating WRNN-DT’s ability to complete its transition to digital-only service, and release the use of its current NTSC Channel 62. In this way, the Commission could more quickly recover spectrum and accelerate the deployment of advanced telecommunications services in the 746-806 MHz band (“700 MHz band”).

In the 1997 Balanced Budget Act (“Budget Act”), Congress directed the FCC to reallocate the 700 MHz band currently occupied by analog broadcast television stations, such as

(...Continued)
decision in the Albany market modification proceeding. Even if the Commission modifies the Bureau’s order, WRNN-TV would nevertheless replicate the vast majority of its market. In addition, the *NPRM* states that WRNN-TV would be subject to any other technical standard that may be adopted by the Commission. WRNN will comply, of course, with any new requirement. Thus, the pendency of the *DTV Biennial Review* proceeding should not affect or delay the Commission’s consideration of WRNN’s petition for the allotment of Channel 48.

²⁰ *Fifth Report and Order*, 12 FCC Rcd at 12811.

WRNN-TV (Channel 62), operating on channels 60 through 69, for public safety and commercial use.²¹ However, the incumbent broadcast users are protected through the end of the DTV transition. Under the FCC's rules, incumbent broadcast stations are permitted to continue analog operations until at least December 31, 2006. Depending on the public's acceptance of DTV, broadcasters may not be required to relinquish their analog spectrum until much later.²² Auction of the 700 MHz band for wireless services is currently scheduled for March 6, 2001. Because use of the spectrum by broadcasters is incompatible with use by wireless carriers, auction winners wishing to initiate commercial wireless services before the end of the DTV transition period will need to relocate the incumbent broadcast stations.

Significant obstacles will have to be overcome before broadcasters will be able to relinquish use of the 700 MHz band. Obviously, the transition cannot occur until DTV receivers and converters have penetrated the market in sufficiently large quantities. A broadcaster cannot encourage consumers to purchase that necessary equipment if the station's ability to reach the market is limited. Further, in the recent 700 MHz Further Notice of Proposed Rulemaking

²¹ The Budget Act initially directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, and to commence competitive bidding for the commercial licenses after January 1, 2001. 47 U.S.C. § 337(e). In 1999, Congress accelerated the schedule for auction of the commercial spectrum bands and required the auction proceeds to be deposited in the U.S. Treasury by September 30, 2000. *See Consolidated Appropriations Act*, Appendix E, § 213. *See also* 145 Cong. Rec. H12493-94 (Nov. 17, 1999).

²² *See* 47 U.S.C. § 309(j)(14)(B) (extending the DTV transition period beyond 2006 based on specified factors, including, *e.g.*, the availability generally of DTV technology and services in the market).

proceeding, broadcasters raised serious concerns about the number of viewers that could be lost as a station moves voluntarily from its analog channel to digital-only service.²³

Because of these issues, the Commission has proposed a number of mechanisms that would encourage the early return of spectrum in the 700 MHz band. Thus, highlighting its “interest in facilitating the early clearance of incumbent broadcast stations on channels 59-69 through voluntary means,” the FCC has initiated a proceeding to investigate several 746-806 MHz band clearing proposals.²⁴ Indeed, the FCC has found that there are public interest benefits derived from certain band-clearing agreements between broadcasters and auction winners, and therefore has established a presumption in favor of certain agreements.²⁵ The Commission recognized that such arrangements would “further the broad public interest . . . [by] facilitat[ing] the provision of new wireless services to all Americans . . . and should help expedite a transition to DTV....”²⁶

The allotment of Channel 48 would similarly provide an opportunity for 700 MHz spectrum to be recovered more quickly. As noted above, the proposed service would reach a

²³ See, e.g., *Comments of Paxson Communications Corporation*, WT Docket No. 99-168, at 26 (filed Aug. 16, 2000); *Comments of Sinclair Broadcasting Group, Inc.*, WT Docket No. 99-168, at 3 (filed Aug. 16, 2000); *Comments of Shop-at-Home, Inc.*, WT Docket No. 99-168, at 7 (filed Aug. 16, 2000); *Comments of USA Broadcasting, Inc.*, WT Docket No. 99-168, at 6 (filed Aug. 16, 2000).

²⁴ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions of Part 27 of the Commission’s Rules; Carriage of the Transmissions of Digital Television Broadcast Stations; Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-83 at ¶ 2 (rel. June 30, 2000).

²⁵ *Id.* at ¶ 61.

²⁶ *Id.* at ¶ 53.

much broader population than would be possible with DTV Channel 21. The increase in potential viewers could help offset the loss of over-the-air viewers as WRNN-TV moves to digital broadcasting. This in turn could facilitate the early recovery of the analog Channel 62 to free the way for the myriad advanced services contemplated in the 700 MHz band.²⁷ As a result, by allocating DTV Channel 48 the FCC could enable the public to enjoy more quickly the twin benefits of ubiquitous, over-the-air DTV and state-of-the-art wireless services.

III. The Planned Improvements to a Full-Power DTV Station Will Have Minimal Impact on Low Power Television Service and, in any Event, Will Yield Overwhelming Public Interest Benefits that Far Outweigh the Potential Impact on a Construction Permit for WKOB's Secondary – and Part-Time – Operations

WKOB's principal objection to the allotment of Channel 48 is the potential displacement of a construction permit it holds for WKOB-LP. The low power station currently operates on Channel 53. In late March 2000, however, the FCC issued a construction permit for WKOB-LP to operate on Channel 48.²⁸ WKOB acknowledges that the authorizations for WKOB-LP are secondary. Notwithstanding its legal obligation to accept interference from full-power

²⁷ See *Fifth Report and Order*, 12 FCC Rcd at 12827 (“Broadcasters can best stimulate consumers’ interest in digital services if able to offer the most attractive programs, whatever form those may take, and it is by attracting consumers to digital, away from analog, that the spectrum can be freed for additional uses.”).

²⁸ Of course, this permit was issued well after WRNN filed its Petition and Supplement, which discussed the impact of the allotment of Channel 48 on low power and television translator operations. See also, WRNN Comments in MM Docket No. 00-121 (August 21, 2000) at 2 n.1 (stating that allotment of Channel 48 would not interfere with any authorized Class A low power station).

operations, however, WKOB asserts that WRNN has not met its “burden” of justifying a change in the “*status quo*.”²⁹

To the contrary, the Commission has repeatedly held that low power services retain their secondary status, especially as necessary to ensure the development of full-power DTV service. In light of the secondary and part-time operations provided by WKOB-LP, moreover, the potential displacement of its construction permit will have a negligible impact on the public. As a result, to the extent the Commission considers the effect of the Channel 48 allotment on WKOB’s construction permit at all, the overwhelming public interest benefits of improving a full-power DTV service will far outweigh the displacement of a single authorization for secondary service.³⁰

The FCC repeatedly has held that it will be necessary to retain the secondary status of low power and translator stations during the implementation of DTV services. Because “there is insufficient spectrum available in the broadcast TV bands to factor in low power displacement considerations in making DTV allotments,” the Commission held in its *Sixth Report and Order*

²⁹ WKOB Comments at 2-3.

³⁰ It is unclear whether the Commission will consider the impact on a non-Class A low power station, such as WKOB-LP, in a DTV allotment modification proceeding at all. Section 73.623(c) does not require any showing with respect to interference that may be caused to secondary low power services. The FCC also has approved a DTV channel change where, as here, the proposal did not “have a negative impact on any LPTV station *that has been certified as eligible for Class A television status...*” *Amendment of Sections 73.602(b) and 73.622(b) (Lake Havasu City, AZ and Laughlin, NV)*, MM Docket No. 99-114, DA 00-1448 (June 30, 2000) at ¶ 9 (emphasis added). Moreover, the Commission has long noted that low power television and television translator services “*are two secondary services that have traditionally not had standing in allotment proceedings.*” *Amendment of Section 1.420(f) of the Commission’s Rules Concerning Automatic Stays of Certain Allotment Orders*, 11 FCC Rcd 9501, 9512 (1996) (Regulatory Flexibility Analysis) (emphasis added).

on the implementation of DTV that “it will be necessary to displace a number of LPTV and TV translator operations, *especially in the major markets*,” in order to bring DTV services to the public.³¹

Upon reconsideration of this issue, the FCC confirmed its decision to retain the secondary status of low power stations. Given the obligation to “ensure that [its] goals for the implementation of DTV are achieved before taking any additional steps to minimize the impact on these secondary operations,” the agency reiterated that “as secondary operations, low power stations must give way to new operations by primary users of the spectrum.”³² The Commission further noted that any “measures to accommodate low power stations would, by their very nature, pose restrictions on [the agency’s] choice of allotments for full service DTV stations.”³³ Indeed, the Commission has refused generally to consider requests from low power operators to modify the channels allotted to full-power stations because of the potential adverse impact such changes could have on the roll-out of DTV.³⁴

³¹ *Advanced Television Systems (Sixth Report and Order)*, 12 FCC Rcd 14588, 14651 (1997) (emphasis added) (“*Sixth Report and Order*”); see also *Advanced Television Systems (Sixth Further Notice of Proposed Rulemaking)*, 11 FCC Rcd 10968, 10994 (1996) (noting that a significant number of low power station displacements would be required, since “it will be a challenge just to provide all full-service licensees with an additional 6 MHz for DTV”). The FCC adopted a number of measures to help mitigate the impact of displacement on low power stations, such as making it easier for them to apply for replacement channels. See, e.g., *Sixth Report and Order*, 12 FCC Rcd at 14652-53.

³² *Advanced Television Systems (Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order)*, 13 FCC Rcd 7418, 7461 (1998).

³³ *Id.* at 7462.

³⁴ See *Advanced Television Systems, Second Memorandum Opinion and Order*, 14 FCC Rcd 1348, 1385 (1998). Modifications to existing full-power digital television stations also generally take precedence over the new “Class A” low power television service established by

(Continued...)

WKOB's concern about the possible displacement of its low power construction permit has already been considered, and rejected, by the FCC as a policy matter. Indeed, in this context the Commission has a statutory imperative to favor the DTV allotment over WKOB's speculative low power service on Channel 48. In adopting rules to accommodate the reallocation of the 700 MHz band, the Commission noted that, while it desired to take "reasonable steps" to accommodate low power operations, "*we are obligated to facilitate the DTV transition and to reallocate the TV channels 60-69 as directed under the Budget Act.*"³⁵ Moreover, WKOB's suggestion that WRNN must demonstrate the availability of another channel for WKOB-LP turns the law on its head.³⁶ The Commission has held that full-service stations requesting modification of DTV allotments that would cause interference to even "Class A" low power stations "will not be required to demonstrate that the adjustment can *only* be made in this fashion."³⁷ In light of the FCC's consistent precedent on this issue, WKOB has no basis to object

(...Continued)

the FCC pursuant to the Community Broadcasters Protection Act of 1999 ("CPBA"), which grants limited primary status to a very narrowly defined group of low power services that satisfy statutorily mandated criteria. 47 U.S.C. § 336(f); *Establishment of a Class A Television Service*, MM Docket No. 00-10, FCC 00-115 (April 4, 2000). Under the CPBA, even stations that merit Class A status are subject to displacement. *See Class A Television Service*, MM Docket No. 00-10 at ¶¶ 61-64. Indeed, in balancing the interests of Class A and full-power DTV stations, the FCC has determined that its primary obligation was to "ensure that the transition of full power television to digital broadcasting is not undermined." *Establishment of a Class A Television Service (Notice of Proposed Rulemaking)*, 14 FCC Rcd 16389, 16399 (1999). In particular, the agency noted the importance of ensuring its "capacity to accommodate necessary adjustments in full power stations' operating parameters as digital service is being implemented." *Id.*

³⁵ *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd 22953, 22966 (1998).

³⁶ WKOB Comments at 3.

³⁷ *Class A Television Service*, MM Docket No. 00-10 at ¶ 64 (emphasis in original).

to the proposed allotment on the ground that DTV service on Channel 48 may conflict with its recently issued construction permit.

WKOB also fails to offer any public interest justification for the Commission to reverse its long-standing policies regarding the secondary status of low power operations in this proceeding. Indeed, the facts demonstrate that the potential displacement of WKOB's construction permit would have no adverse impact on the public interest. According to WKOB's own filings with the Commission, the low power station has provided marginal service, if any, for at least the past year. Thus, in a January 2000 filing with the FCC seeking Class A eligibility, WKOB acknowledged that for the 90-day period ending November 28, 1999, the station neither broadcast a minimum of 18 hours a day nor carried an average of 3 hours or more per week of locally-originated programming.³⁸ WKOB further admitted that the station voluntarily ceased broadcasting for almost a three-week stretch during the same period of time.³⁹ After restoring "limited programming," WKOB said it "hoped" to return to full time operations by October 1, 1999.⁴⁰

The Commission summarily dismissed WKOB's request for Class A status.⁴¹ In a two-page petition for reconsideration of that decision, WKOB made clear that little, if any, progress

³⁸ See Statement of Eligibility for Class A Low Power Television Station Status, filed by WKOB Communications, Inc., January 28, 2000.

³⁹ *Id.* at Exhibit 1. The station stopped broadcasting when Paxson Communications LPTV, Inc. did not renew a time brokerage agreement, pursuant to which Paxson had programmed WKOB-LP.

⁴⁰ *Id.*

⁴¹ See Public Notice, Dismissal of LPTV Licensee Certificates of Eligibility for Class A Television Station Status, DA 00-1227 (June 9, 2000).

had been made to restore service. Specifically, more than nine months after it had planned to resume full-time operations, WKOB acknowledged that it was still in the “process” of trying to resume normal service, even though it allegedly was “seriously applying itself to meeting all Class A operating requirements.”⁴²

Despite the passage of more than one year after voluntarily terminating full-time broadcasts, WKOB apparently has yet to resume full-service operations, meet even the minimal programming requirements for Class A service, or establish any discernible presence in the media marketplace. Based upon a sampling of WKOB’s broadcasts, on each of 39 days during the period from April 28, 2000 through August 22, 2000, WRNN has determined that WKOB operated for as little as three hours, and for no more than five hours, on any one day. None of WKOB’s programming reviewed by WRNN appeared to have been locally originated. Moreover, none of the eight published New York television program guides reviewed by WRNN included WKOB-LP.⁴³

Nor should WKOB be heard to complain about having paid for its displacement channel in an auction proceeding.⁴⁴ In implementing its competitive bidding procedures, the Commission admonished that the “secondary nature of the LPTV service[] . . . would not be altered by the

⁴² Petition for Reconsideration of WKOB Communications, Inc., DA 00-1227 (July 7, 2000) at 2. The “public interest factors” asserted by WKOB to support reconsideration included an unverified allegation that the station provided local service at some undated time “*in the past*,” and the “sudden departure” one year ago of its program supplier, which apparently did not renew a time brokerage agreement. *Id.* (emphasis added). WKOB made no assertion that it had in fact restored any local service. *Id.*

⁴³ See Declaration of Christian French, attached.

⁴⁴ WKOB Comments at 2-3.

awarding of construction permits for these services by auction.”⁴⁵ Indeed, WKOB’s construction permit for Channel 48 bears the following explicit condition:

This authorization is subject to the condition that low power television is a secondary service, and that low power television and television translator stations must not cause interference to the reception of existing or future full service television stations on either allotted NTSC or DTV channels, and must accept interference from such stations.⁴⁶

Thus, WKOB acquired the authorization with full knowledge of the risks associated with secondary services.

Finally, in the event WKOB desires to resume full-service operations in the future, it may have other alternatives to Channel 48. For example, other channels can be expected to become available in the market throughout the transition to DTV, which could provide WKOB with the opportunity to continue or establish a low power service. During this time, WKOB may also be able to take advantage of the considerable technical flexibility provided by the Commission’s Rules to accommodate low power and television translator station operations.⁴⁷

In short, the potential to displace one low power construction permit for a part-time service should be given little, if any, consideration in light of the extraordinary public interest benefits of allocating DTV Channel 48 for use by WRNN-TV.

⁴⁵ *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 14 FCC Rcd 8724, 8757 (1999).

⁴⁶ Construction Permit No. BPTTL-JG0601NK, granted March 28, 2000.

⁴⁷ *See Advanced Television Systems (Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order)*, 13 FCC Rcd at 7457-58.

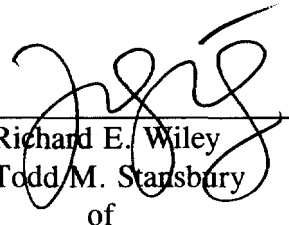
IV. Conclusion

The proposed allotment of DTV Channel 48 fully complies with the Commission's Rules and policies. The modification also would further the Congressional directives of promoting DTV and facilitating the recovery and reuse of the 700 MHz band. The proposal would yield the additional public interest benefits of reducing interference in the marketplace, maximizing the availability of DTV service, and enhancing spectrum efficiency by making the most productive use of available resources. Therefore, the Commission should promptly substitute DTV Channel 48 for Channel 21 at Kingston, and modify the license for WRNN-TV accordingly.

Respectfully submitted,

WRNN-TV ASSOCIATES LIMITED PARTNERSHIP

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of

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Its Attorneys

September 5, 2000

DECLARATION OF CHRISTIAN FRENCH

I, Christian French, hereby declare under penalty of perjury as follows:

1. I am Director, New Business Ventures, of WRNN-TV Associated Limited Partnership, the licensee of WRNN-TV, Kingston, New York.
2. I, and other individuals under my direction and supervision, monitored the broadcasts of WKOB-LP during the period April 28 through August 22, 2000. Video tapes were made of these broadcasts on each of 39 days during this time period. These tapes were reviewed to determine the length of each day's broadcast on WKOB-LP and the point of origination of the programming. Since the broadcasts were conducted in the Korean language, an interpreter was employed to assist with review of the material. To the best of my knowledge after review of the tapes, on each of the days that we monitored WKOB-LP, the station broadcast for as little as three hours, and for no more than five hours, per day. Also, none of the material we reviewed appeared to contain local programming, news or information.
3. I have reviewed the television program guides published during the week of August 24, 2000, by: *TV Guide, Flushing Times, New York Times, New York Daily News, New York Newsday, Korean Central Daily, Korea Times, and New York Post*. None of these program guides lists WKOB-LP.
4. I have reviewed the foregoing Reply of WRNN-TV Associates Limited Partnership and, to the best of my knowledge, the facts contained therein are true and correct.



Christian French

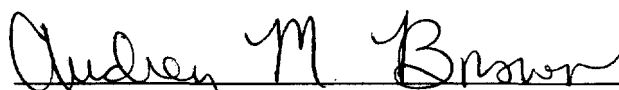
September 5, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2000, I caused copies of the foregoing Reply of WRNN-TV Associates Limited Partnership to be mailed via first-class postage prepaid mail to the following:

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